

The 2nd May, 1968

No. 2261-EI-68 1515 The President of India pleased to appoint Shri Amar Nath Singal, Superintendent, Deputy Commissioner's Office, Rohtak, working against an ex-cadre Post of Superintendent in the scale of Rs. 350—25—500; 30—650, as officiating Superintendent, Commissioner's

Office, Ambala, in the scale of Rs. 350—25—500; 30—650, with effect from forenoon of 2nd September, 1967, vice Shri Partap Singh Virk, who has been sent on deputation as Superintendent, Commissioner's Office, Patiala. This appointment is being made with the concurrence of Haryana Public Service Commissioner.

SUKHDEV PRASAD, Dy. Secy.

HARYANA GOVERNMENT

AGRICULTURE DEPARTMENT

(Market Committees)

The 30th April, 1968

No. 2462-Agr. I(VII)-68 10696 — In exercise of the powers conferred by section 36 of the Punjab Agricultural Produce Markets Act, 1961, and all other powers enabling him in this behalf, the President of India, being satisfied that a situation has arisen in which the purposes of the said Act cannot be carried out in accordance with the provisions thereof within the market area of Fatehabad in district Hissar, he hereby declares that all the functions of the Market Committee, Fatehabad in district Hissar, shall be exercised by the Sub-Divisional Officer (Civil), Fatehabad, district Hissar

S. K. CHHIBBER,

Financial Commissioner, Development, and Secretary to Government, Haryana, Development and Agriculture Department.

HARYANA GOVERNMENT

TECHNICAL EDUCATION DEPARTMENT

The 27th/30th April, 1968

No. 2565-PWIII(I)-68 1069 — On transfer Shri Buta Mal, Lecturer in Civil Engineering, Haryana Polytechnic, Nilokheri relinquished charge of his duties on 15th April, 1968 (afternoon).

2. Shri Buta Mal assumed charge as Lecturer in Civil Engineering at the Central Polytechnic, Chandigarh, with effect from 23rd April, 1968 (forenoon).

The 2nd May, 1968

No. 2614-PWIII(I)-67 10679 — On final allocation from Punjab to Haryana, Shri Bhagwan Dass assumed charge of the post of Superintendent Workshop Government Polytechnic Ambala on 22nd April 1968 (forenoon)

ISHWAR CHANDRA, Secy.

HARYANA GOVERNMENT P. W. D. IRRIGATION DEPARTMENT

The 26th April, 1968

No. 2550-PW-I-68/1069 — The President of India is pleased to order confirmation of Shri P. N. Gupta as Superintending Engineer in the P.W.D. (IB) with effect from 1st January, 1965, the date from which a vacancy was kept reserved for him.

ISHWAR CHANDRA, Secy.

ANNEXURE III

PUBLIC WORKS DEPARTMENT

BUILDINGS AND ROADS BRANCHES

The 26th April, 1968

No. 28HA/140/161-R — Whereas it appears to the Governor of Haryana that land is likely to be acquired to be taken by the Government at public expenses, for a public purpose, namely, for constructing, it is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provisions of section IV of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to acquisition of any land in the locality may within 30 days of the publication of this notification file an objection in writing before the Land Acquisition Officer, P.W.D., B. & R. Haryana, Ambala Cantt.

SPECIFICATION

District	Tehsil	Name of Village	Area in acres
Hissar	Hissar	Talwara	10.47

(Sd.) . . .,
Superintending Engineer, Hissar circle,
Public Works Department,
Buildings and Roads Branch,
Hissar.

HARYANA GOVERNMENT
PUBLIC WORKS DEPARTMENT
(IRRIGATION BRANCH)

The 27th April, 1968

No. 2690-PWI(5)68 10151.—It is hereby notified for general information that "Exploratory Tubewell Cell" in the Irrigation Department, Haryana created—*vide* Haryana Government memo No. 9166-PWI(5)-67/29311 dated the 2nd December, 1967, is renamed as "Underground Water Surveys Division".

No. 1688-PWIII(2)-68 9801.—Consequent upon relinquishing the charge in the Indian Institute of Technology, Delhi where he was on deputation, Shri M. M. Mathur, Sub-Divisional Engineer, formed and assumed charge of the office of Public Health Sub-Division No. 3 at Rohtak on 29th January, 1968 (F. N.)

ISHWAR CHANDRA, Secy.

HARYANA GOVERNMENT
ORDER OF THE PRESIDENT OF INDIA

The 17th April, 1968

No. 2407-DTCP-68 1889-1898. Shri S. G. Sundaram IAS, Estates Officer, Faridabad, is appointed to exercise and perform the powers and functions of Director under the the Punjab Scheduled Roads Controlled Areas and Restriction of Unregulated Development Act, 1963 and the Rules made thereunder except those under section 5 in respect of the "Controlled Areas" at Faridabad, Gurgaon, Sonepat Bahadurgarh and Ganaur.

No. 2408-DTCP-68 1899-1908.—Shri S. G. Sundaram, IAS, is appointed to perform the functions of Estate Officer under the Punjab Urban Estates (Development and Regulation) Act, 1964 and the Rules made thereunder in the Urban Estates at Faridabad, Ballabgarh, Gurgaon, Bahadurgarh and Sonepat.

Shri S. G. Sundaram, IAS, is further appointed as Chief Administrator to perform the functions of the Chief Administrator under the Punjab Urban Estates (Development and Regulation) Act, 1964 and the Rules made thereunder in respect of the Urban Estates referred to above.

S. N. BHANOT, Joint Secy.

HARYANA GOVERNMENT

LABOUR DEPARTMENT

NOTIFICATION

The 26th April, 1968

No. 3932-3Lab-68/10932.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Aldecore (P) Ltd., Daultabad, Gurgaon:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 111 of 1967
between

THE WORKMEN AND THE MANAGEMENT OF M/S ALDECORE (P) LTD., DAULTABAD, GURGAON

Present.—Shri C.B. Kaushik, for the workmen.
Shri S.L. Gupta, for the management.

AWARD

Sarvshri Madan Lal, Amar Nath were in the service of M/s Aldecore (P) Ltd., Gurgaon. Their services have been terminated and this gave rise to an industrial dispute. The President of India, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication—*vide* Government Gazette Notification No. 550-SF-III-Lab-67, dated and December, 1967:—

Whether the termination of services of Sarvshri Amar Nath and Madan Lal was justified. If not, to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties in response to which the workmen filed their statement of claim and the management filed their written statement. So far as Madan Lal is concerned he has withdrawn his claim for reinstatement. It is alleged that he has received his dues in full and final settlement and he has obtained re-employment in Delhi on higher wages and is no more interested to rejoin the respondent concern. As regards Shri Amar Nath, it is alleged that the dismissal is wrongful because he was not given any charge-sheet or any opportunity to explain his position. No enquiry was held against him. It is alleged that he was not guilty of any misconduct nor did he assault the Store-keeper who has no concern with the working of the factory. On behalf of the management it is pleaded that on 27th May, 1967, Shri Amar Nath, claimant switched off the motor for the whole day and the Company had to suffer considerable loss on this account. It is further alleged that the Store-keeper asked him not to misbehave in this manner upon which he assaulted the Store-keeper and also instigated his fellow workmen not to work. It is further alleged that Sh. Amar Nath, claimant, had been given several warnings and later on he was charge-sheeted on account of his misbehaviour. A domestic enquiry was held against him and he was found guilty, so his services were terminated with effect from 1st June, 1967, and he was paid the salary due to him including his over-time amounting to Rs. 146.87. Accordingly the following issue needs decision.—

Whether the termination of services of Shri Amar Nath was justified and in order. If not, to what relief he is entitled?

According to the version of the management the incident is alleged to have taken place on 27th May, 1967, at about 11-30 A.M. Shri M.K. Puri, the Managing Director of the respondent concern, was not present at that time. He admits in his evidence that the alleged misbehaviour of Sh. Amar Nath claimant was reported to him verbally by the Store-keeper on the next working day, i.e. 29th May, 1967, and he simply made verbal enquiries. No charge-sheet or a show-cause notice was given to the workman concerned and no proper domestic enquiry envisaged by law was held. Shri Puri states that he made verbal enquiries from Shri Kanwar Singh, Gate keeper, Ajab Singh and Baij Nath workmen and he also discussed the matter with the other workers and was satisfied that the report made to him by the Store-keeper was correct. Obviously it is not possible to up-hold the dismissal of the claimant on the basis of such an informal enquiry. It does not appear that any witnesses were examined in the presence of the claimant and he was given an opportunity to cross-examine them or to produce his defence.

The management have however produced evidence in support of the allegations made against the claimant which have resulted in his dismissal and we have to see whether the evidence produced before this Court justifies the dismissal of the claimant. This evidence consist of oral testimony of Sh. Sukhdev, M.W.1, Store-keeper, Sh. Kanwar Singh, M.W. 2, Chowkidar and Shri Baij Nath Singh, MW 3, Buffman. All these witnesses are the employees of the respondent concern. Shri Sukhdev M.W. 1 is the main witness. He says that although employed as a Store-keeper it was also a part of his duties to distribute the salary to the workmen and on 27th May, 1967, he was distributing Rs. 1.50 paisa to enable them to purchase Gur. He says that the claimant Sh. Amar Nath refused to accept the money on the ground that the prices of Gur had increased and therefore the amount of money should also be increased but witness told him to make this request to Shri Puri (Managing Director) to which the claimant replied that if he (witness) could not pay the proper price he could not take the work from him and the claimant then switched off the electric current and exhorted the other workmen not to work. The witness says that the claimant then came to him, caught hold of him by his neck and gave him a push and fist blows because he told him as to why he had switched off the current and he also exhorted the other workmen not to work. According to the testimony of this witness no work could be done in the factory on that day till the evening because the other workmen had also joined the claimant and so on the following day he made a verbal report to Shri Puri who made verbal enquiry into the matter and was satisfied that the claimant was guilty of misbehaviour as alleged. Shri Baij Nath Singh, M.W. 3, Buffman, corroborates the testimony of this witness. Shri Kanwar Singh M.W. 2, Chowkidar, whose duty is to remain at the outer Gate which is at some distance from the place where the workmen actually worked also supports Shri Sukhdev, Store-keeper. Shri Kanwar Singh says that the Postman handed over the dak to him at the outer gate which he happened to bring inside just at the time when the incident took place and he also corroborates the testimony of Sarvshri Sukhdev and Baij Nath Singh, witnesses, for the management. Shri M.K. Puri, Managing Director of the respondent concern states that the witnesses in question narrated this occurrence to him when he came to the factory on the next working day, i.e. 29th May, 1967, 28th May, 1967, being holiday, and the other workmen apologised to him.

In rebuttal the claimant Shri Amar Nath alone has come into the witness-box and denies point blank that any incident as alleged took place. He says that the management was not happy with him because they wanted him to do the work on contract basis but he was not agreeable and so they wanted to terminate his services on some pretext and to give the work which he was doing to somebody else on contract. He says that the management was also annoyed with him because they felt that he was instigating his co-workers to join the union. According to the version of the claimant the workmen had no occasion to come into contact with the Store-keeper.

Apart from the oral evidence detailed above no other evidence has been produced. The version of the management is just opposed to the version of the claimant. As we have already seen the version of the management is that practically no work could be done in the factory on 27th May, 1967, because the claimant had switched off the electric current and had also instigated his fellow workmen not to do any work while according to the version of the claimant the work was carried on normally on the day in question and no incident whatsoever took place. I gave an opportunity to the management to produce their records in order to show their daily production in order to ascertain whether the work in the factory actually remained closed on 27th May, 1967. The representative of the management has stated that the management are maintaining the production register only from January, 1968, and no other record is maintained by the management from which it can be ascertained whether the work in the factory was actually done on any particular day except the attendance register. It was admitted that no workman was marked absent on the day on which this incident took place. Thus we find that for the purpose of determining whether on account of the alleged misbehaviour of the claimant no work could be done in the factory on 27th May, 1967, we have to depend upon oral evidence alone as given by the parties.

The learned representative of the claimant has severely criticised the evidence of the management. He has submitted that there is a material contradiction in the evidence of three workmen, namely Sarvshri Sukhdev, Kanwar Singh and Baij Nath Singh and the evidence of the Managing Director Shri M. K. Puri. According to the evidence of the workmen the occurrence took place on 27th May, 1967, and it was reported to the Managing Director on the

next day which means 28th May, 1967, who then made verbal enquiry but according to the evidence of the Managing Director he came to the factory on 29th May, 1967, and not on 28th May, 1967. In my opinion this contradiction is not material. The workmen have stated that the incident was reported to the Managing Director on the next day and the Managing Director also stated as at first that the occurrence was reported to him on 28th May, 1967, but then he immediately corrected himself and stated that the occurrence was reported to him on 29th May, 1967, 28th May, 1967, being holiday. This according to both the versions the incident was reported on the next working day.

The other point taken up by the learned representative of the workmen is that the version of the management that no work was done in the factory on 27th May, 1967, is contradicted by their own records. It is submitted that in case the workmen had not done any work on 27th May, 1967, as alleged, then they would have been marked absent but admittedly no workman was marked absent on that day and this act proved beyond doubt that the version of the management that no work was done in the factory on 27th May, 1967, is without any basis. In my opinion it is not possible to come to any finding as to whether any work was or was not done on 27th May, 1967, simply on the basis of the entries in the attendance register. The learned representative has explained that the management did not wish to take any penal action against the workmen for not working on 27th May, 1967. They had already been marked present before the incident in question took place. Apart from the Store-keeper, no other responsible person was present on behalf of the management at that time and the incident was reported to the Managing Director when he visited the factory on the next working day i.e. 29th May, 1967, and when he made verbal enquiries the other workmen apologized and so no action was taken against them. The learned representative of the workmen has submitted that the management have intentionally withheld the record of the daily production and for this reason an adverse inference should be drawn against them. In my opinion there is no force in this submissions. As already pointed out Shri S.L. Gupta, representative of the management has stated in the Court that the management is maintaining the production register only from January, 1968, and if this position was not correct the workmen could have easily made an application that the production record was being maintained by the management and it should be summoned. No such application was made.

It is really surprising that not a single workman has appeared in support of the claimant. The learned representative of the claimant has explained that the fellow workmen being still in the service of the respondent have not dared to appear in evidence against them. In my opinion this explanation is not sound. In case nothing happened and the work was carried on normally on 27th May, 1967, as alleged by the claimant, then there was nothing to prevent the fellow workmen to come into the witness box and assert this fact in Court. It does not appear that the management have such a great hold on all other workmen that they dare not appear and speak the truth in Court even if their fellow workmen have been victimised and a charge has no basis whatsoever has been falsely brought against him. In case the workmen were so much under the influence of the management then they could not have been instigated by the claimant and stopped the work on 27th May, 1967, as alleged by the management.

The circumstances of the case also do not support the version of the claimant. He says that the management was not happy with him because they wanted him to work on contract basis to which he was not agreeable and so the management wanted to terminate his services on some pretext so as to give the work which he was doing to some body else on contract basis. If this allegation has been correct then it would have been very easy for the claimant to summon the record of the management and to prove that the work which the claimant was doing has been given to some body else on contract basis but no such application was given. The version of the claimant that he has been victimised on account of his Trade Union Activities also does not appear to be correct because not even a single Trade Unionist has come forward to support him. The claimant admits that Shri Kanwar Singh, Chowkidar is a member of the union. The management could not possibly be annoyed with the claimant by reason of his alleged trade union activities if he has not been able to win over a single co-worker on his side. In my opinion there is no reason to disbelieve the version of Sarv shri Sukhdev, Kanwar Singh, Chowkidar, and Bajj Nath Singh, Buffman and the alleged misbehaviour of the claimant is satisfactorily proved by their evidence. The termination of his services cannot therefore be held to be unjustified and he is not entitled to any relief. As regards Shri Madan Lal, he too is not entitled to reinstatement or any other relief because he has withdrawn his claim. I make no order as to costs.

Dated 10th April, 1968

P.N. THUKRAL,

Presiding Officer,

Labour Court, Rohtak

No. 734, dated 10th April, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 10th April, 1968

P. N. THUKRAL,

Presiding Officer,

Labour Court, Rontak.

The 26th 27th April, 1968

No. 3933-3Lab-68/10934. In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding,

Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Ego Metal Works, Ltd. Gurgaon :—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER LABOUR COURT, ROHTAK
Reference No. 95 of 1967
between

Shri Tilak Raj Anand, workman and the management of M/s Ego Metal Works, Ltd., Gurgaon

Present:—

Shri C.B. Kaushik for the workman.
Shri S.L. Gupta, for the management.

AWARD

Shri Tilak Raj Anand after the termination of his services in M/s Tej Industries has joined M/s Ego Metal Works, Ltd., Gurgaon, as a Fitter. His services were also terminated by the management of M/s Ego Metal Works on 9th August, 1967. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication *vide GOVERNMENT GAZETTE*, Notification No. 456-SF-III-Lab-67 dated 28th September, 1967

Whether the termination of services of Shri Tilak Raj Anand was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which the claimant filed a statement of claim and the management filed their written statement. On behalf of the claimant it is alleged that he was appointed as a helper on probation for three months at Rs. 72 p.m. with effect from 6th December, 1966 and he was promoted as a Fitter on probation for six months at Rs 150 p.m. with effect from 7th January, 1967. It is alleged that the claimant remained in continuous service from 6th December, 1966 to 9th August, 1967 when he was refused duty. It is alleged that the termination of his service in this manner was illegal, unlawful because no charge-sheet or any show-cause notice to enable him to explain his position was given to him. He has, therefore, prayed that he may be reinstated with continuity of service and full back wages.

On behalf of the management it is submitted that the claimant was informed *vide* letter dated 5th August, 1967 that his services were no longer required and this letter was received by him on 6th August, 1967 and under clause 3 of the certified standing orders, his services could be terminated within one month of the expiry of the probational period. The pleadings of the parties gave rise to the following issues :—

1. Whether the claimant joined the service with the respondent concern on 6th December, 1966 as a helper on probation for three months and he resigned ?
2. Whether the claimant was appointed as a fitter on 7th January, 1967 on probation for six months at Rs 150 p.m. ? If so, whether his services could be terminated within one month of the expiry of the probation period without assigning any reason according to the standing orders ?
3. If the above issues are decided in favour of the workman, whether the termination of his services was justified and in order and if not to what relief is he entitled ?

The management closed their evidence on the issues framed above but before the claimant could close his evidence, an application was given on behalf of the management that reference number 6 of 1967 was pending in this court and that this reference was also made at the instance of the claimant Shri Tilak Raj Anand against M/s Tej Industries in which the claimant was also claiming reinstatement with full back wages. It was submitted that the claimant could not claim reinstatement with full back wages from both M/s Tej Industries as well as from the respondent M/s Ego Metal Works, Gurgaon. The request of the respondent to stay the proceedings in this case till the disposal of the reference No. 6 of 1967 was accepted and the proceedings were stayed.

Reference No. 6 of 1967 was disposed of and the award submitted by this Court was published in HARYANA GOVERNMENT GAZETTE, dated 23rd January, 1968 *vide* Notification No. 370-3 Lab-68/1294, dated 16th January 1968. An award was made against M/s Tej Industries that the claimant be reinstated with continuity of service and full back wages. In view of this award it is submitted on behalf of the respondent that the claimant is not entitled to claim reinstatement with full back wages in this case also. Notice of this application was given to the claimant. He filed a written reply alleging therein that he had given up his claim for reinstatement and full back wages against M/s Tej Industries and that therefore the present reference could be proceeded with on merits. He filed a certified copy of the terms of settlement arrived at with M/s Tej Industries. On behalf of the management another application dated 12th March, 1968 was made in which it was alleged that the claimant had given up his claim for reinstatement and back wages with M/s Tej Industries in consideration of his having received a sum of Rs 2,200 from them. It is alleged that the claimant has been in the service of the respondent Company, i.e. M/s Ego Metal Works from 6th December, 1966 to 5th December, 1967 and during this period he had received a sum of Rs 1,170 on account of his wages and thus he has in all received a sum of Rs 3377 and that this amount exceeds the amount of his back wages and it must be treated that his right for reinstatement has also been extinguished. The claimant in reply to this objection petition admitted that he had received a sum of Rs 2,200 from M/s Tej Industries but stated that he had received this amount as *ex gratia* compensation and not as wages. Accordingly the following additional issue was framed :—

Whether the claimant is not entitled to proceed with this case for the reasons mentioned in objec .. dated 12th March, 1968 ?

I have heard the learned representative of the parties on the additional issue framed by this Court and since this reference can be completely disposed of on the additional issue alone, I do not propose to give any finding on the issue framed on merits.

The learned representative of the management has submitted that by virtue of the award given by this Court against M/s Tej Industries and published in the HARYANA GOVERNMENT GAZETTE, dated 23rd January, 1967 the claimant has been ordered to be reinstated in that concern with continuity of service and full back wages. It is rightly submitted that this means that the order of the management of M/s Tej Industries terminating the services

of the claimant has been found to be wrongful and thus in the eye of law non-existent. It has been held in 1959-I-LIJ, 635, which is an authority of Madras High Court that where the termination of the services of a person employed in an establishment was found wrongful..... such person must be held to be entitled to the arrears of his salary for the period between the date of termination and his reinstatement in service in pursuance to the order passed..... the termination being held wrongful the concerned employee must be deemed to have continued in service without a break.

In my opinion the submission of the learned representative of the management is correct because it has been held by this Court that the order of the management of M/s Tej Industries terminating the services of the claimant was not legal and therefore it means that the claimant must be deemed to have continued in service of M/s Tej Industries till at least the date the award was published in Government Gazette dated 23rd January, 1967 and if the claimant in the eye of law continued in service of M/s Tej Industries till at least 23rd January, 1967 then he could no possibly acquire a right of being in permanent service in any other concern during this period and therefore he cannot claim reinstatement in the respondent concern also which he joined during the period of his forced unemployment. It is not the law that the applicant could not take up any employment in order to maintain himself after his services were wrongfully terminated by the management of M/s Tej Industries but certainly he could not claim reinstatement simultaneously in two concerns i.e. M/s Tej Industries as also in the respondent concern. The claimant before the award was given in the case against M/s Tej Industries could choose in which concern he wanted to continue in service in case the orders of termination of his services passed by the management of both the concerns were wrongful and it was for this reason only that the proceedings in the present case were stayed till the proceedings in the case against M/s Tej Industries were disposed of. Since the claimant succeeded against M/s Tej Industries and was able to obtain an order of reinstatement with full back wages, it must be held in view of the authority cited as 1959-I-LIJ page 635 that he is deemed to have continued in the service of M/s Tej Industries at least till the date the award against M/s Tej Industries was published and for this reason it is not possible to order reinstatement or award back wages to the claimant in this case against the respondent concern even if the termination of his services in the respondent concern is found to be wrongful. I, therefore give my award accordingly.

No order as to costs.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

Dated 7th April, 1968.

No. 742 dated 10th April, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947

P.N. THUKRAL,

Presiding Officer,
Labour Court, Rohtak.

Dated 7th April, 1968.

The 30th April, 1968

No. 4082-31 sl-68/11269.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of Messrs Goodyear India, Ltd., Ballabgarh:-

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
CHANDIGARH

Reference No. 71 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF MESSRS GOODYEAR INDIA, LTD., BALLABGARH

Present:

Shri K.P. Aggarwal for the management.

Shri Khushinder Singh for the workmen.

AWARD

The management of Messrs Goodyear India, Ltd., Ballabgarh, discharged from service two of their employees, Shri Dinesh Kumar and Shri N.R. Sharma on May 14, 1967, and on May 4, 1967, respectively. Bonus was declared by them in respect of the year 1966, at the rate of 4 per cent of wages of each of the workmen. The trade union of the concern in question issued a demand notice claiming that the two employees named above should be reinstated and that bonus at higher rate be paid to the workmen. The said demands having not been complied with an industrial dispute arose between the parties on the aforesaid points. Both the parties then jointly applied to the Government that the aforesaid dispute be referred to this Tribunal for adjudication. The Government of Haryana thereupon issued notification No. 295-SF-III-Lab-67/21655, dated 24th July, 1967, making a reference of the aforesaid dispute to this Tribunal under sub-section (2) of section 10 of the Industrial Disputes Act, 1947. Two items of dispute which are mentioned in the said notification are in the following words :—

1. Whether the removal of Sarvshri Dinesh Kumar and N.R. Sharma is justified and in order ? If not, to what relief are they entitled ?

2. Whether the management should be required to pay more than 4 per cent bonus already paid to the workmen. If so, with what details ?

On registration of the reference in this Tribunal usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. The pleadings of the parties gave rise to two issues only which are precisely the same as the two items of dispute mentioned above. Parties were directed to lead their evidence in respect of the said two issues and after conclusion of the same their representatives also addressed their arguments to me. My findings on the two issues are as under : -

Issue No. 2. -The management have produced their balance-sheet and profit and loss accounts for the year in question. On an application made by the workmen the management also filed clarifications in respect of some of the items to which the application of the workmen related. According to the management the allocable surplus for the year 1966 was nil and they declared bonus at the rate of 4 per cent under section 10 of the Payment of Bonus Act, 1965. The workmen have not been able to show that the figures given by the management in the balance sheet and profit and loss accounts are in any way erroneous or that the allocable surplus shown by the management to be nil was really more than that. The demand of the workmen in respect of higher bonus has not been substantiated and is accordingly dismissed.

Issue No. 1. -This issue relates to two workmen who are (1) Dinesh Kumar and (2) Navrattan Sharma. I shall deal with their cases separately.

(a) *Case of Shri Dinesh Kumar.* -The management chargesheeted Dinesh Kumar on April 22, 1966, for "misconduct in delaying the work in process and neglect of work under sub-clause 30 and 14 of clause 16 of the certified Standing Orders of the Company". It was said in the charge-sheet, "that on 27th April, 1967 during the third shift, you put one tire code 26292 No. 1 on shape 7.15 a.m. This tire was shaped by you on a 2400 x 24-25 shape bag whereas 26.5 x 29 shape bag should have been used. This caused an undue delay to the production of earth-mover tires". The explanation submitted by Shri Dinesh Kumar having been found to be unsatisfactory a domestic enquiry was held against him by Mr. K. P. Aggarwal, who was the manager, Labour in the concern. He examined evidence on the point and came to a finding that the charge had been established against the delinquent. The management thereafter discharged this workman. It was urged before me that the finding recorded by the Enquiry Officer that the charge had been proved was perverse and was not supported by any legal evidence. After going through the evidence recorded by the Enquiry Officer I find that the contention of the workmen has no force. There was evidence led before the Enquiry Officer with regard to the charge and he chose to believe the said evidence. It may be that if I had to record my findings on the said evidence I may not perhaps have accepted the evidence and may have recorded findings different from those of the Enquiry Officer. This, however, is no ground to hold that the findings of the Enquiry Officer are perverse. It is a well known proposition of law that the Tribunal cannot sit in appeal over the findings of the Enquiry Officer and unless the said findings are shown to be perverse or the enquiry is shown to be vitiated, the Tribunal has no jurisdiction to set-aside the findings recorded by the Enquiry Officer. In the circumstances I hold that the workmen have failed to establish their case that Shri Dinesh Kumar was wrongly discharged. The demand of the workmen in respect of Dinesh Kumar is, therefore, dismissed.

(b) *Case of Shri N.R. Sharma.* -It appears from the evidence on record that Shri N.R. Sharma was at one time suffering from T.B. and that he had to remain on leave for sometime. It further appears that he got some relief from the aforesaid disease but he was still unable to be put to any hard job. He himself applied to the management on 1st October, 1966 that instead of being put to the job of a Cureman he may be put on the job of a Mould Cleaner. He stated in his application that he was fully aware that the new job asked for by him carried less wages but the same were acceptable to him. It appears that he was then put on the job of a Mould Cleaner. On 16th April, 1967 his duty was to start at 10.15 A.M. As soon as he reported for duty that day he was asked to work as a Cureman. The case of the management is that some sort of a letter of transfer was given to him in this respect. That letter has, however, not been produced by the management and no one has been able to explain the reasons for the non-production of the said letter. As soon as Mr. Sharma was asked to perform the said duty he immediately stated that he had severe pain in his chest at the time and was not able to do the job assigned to him. His officer sent him to the hospital for examination. It is a pity that the said hospital is perhaps being run without a doctor and some male nurse who was incharge of the hospital made a report that Mr. Sharma was fit for duty. On the said report having been received Shri Sharma was again asked to resume duty but he again complained that he had severe pain in his chest near the right lung and was unable to work. Some officer again sent him to the same male nurse who again made another report of the same type saying that Mr. Sharma was fit for duty. Mr. Sharma then asked for leave to go home and was ultimately sent home. Next day, however, a charge sheet was given to him that he had deliberately refused to obey the orders of his officers and had refused to do the work in the curing Department. A domestic enquiry was thereafter instituted against him by Mr. K.P. Aggarwal. Before the Enquiry Officer he stated that he should be allowed to be represented through Mr. Khushinder Singh who was the President of the Trade Union of which he was a member. This request was turned down by the Enquiry Officer on the ground that Mr. Khushinder Singh was under suspension and that Mr. Sharma could not be allowed to be represented through him. Some witnesses were examined but it was admitted by all of them that at the time when Mr. N.R. Sharma was asked to work he complained of pain in his chest. Mr. Sharma gave his own statement before the Enquiry Officer giving complete details of how he was asked to work and how he told every officer that he was suffering from severe pain in his chest and was unable to do the work. He also produced therefrom a certificate from a doctor showing that he was not feeling well on the date and time when he is alleged to have disobeyed the orders of his supervisors. The Enquiry Officer disbelieved Shri N.R. Sharma on the short ground that the male nurse had reported twice that he (Mr. Sharma) was fit for duty. After giving my careful consideration to the whole matter and to the evidence recorded by the Enquiry Officer I am definitely of the opinion that the findings of the Enquiry Officer in respect of Shri Sharma are entirely perverse. Even a qualified doctor would not have been able to say that Mr. Sharma had no pain in his chest and medical examination of any type whatever could not have shown that. The Enquiry Officer based on his finding merely on the report of a Male Nurse without applying his mind to the fact that the said report afforded no evidence of the fact that Mr. Sharma had at that time no pain in his chest. The said report could not under the law be treated as a piece of evidence on this matter.

Moreover I feel that Mr. Sharma was not given a proper opportunity to defend himself at the said enquiry. His request that he may be allowed to be represented through Khushinder Singh, President of his trade union was perfectly in order. Sub-clause 'C' of clause 17 of the Standing Orders of the concern Exhibit A provides as under : -

"A workman against whom an enquiry is to be held, shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring a satisfactory explanation. He shall be given an opportunity to answer the charge and permitted to defend himself and/or be represented by another employee".

There can be no doubt that Mr. Khushinder Singh was an employee of the concern on the date Mr. Sharma wanted to be represented through him. It may be that he was under suspension but order of suspension did not mean that he had ceased to be an employee of the concern. It is admitted by Mr. K.P. Aggarwal in his evidence before me that a request was made to him by Mr. Sharma that he may be allowed to be represented by Shri Khushinder Singh and that the said request was turned down by him on the ground that Mr. Khushinder Singh was under suspension. It is so mentioned by the Enquiry Officer even in the enquiry proceedings.

It may further be mentioned that Khushinder Singh, President of the Goodyear Employees Union has appeared as a witness as A.W.1 and has stated that the management suspended 70 or 80 workmen pending enquiries against them and 24 of them were ultimately discharged. On a hunger-strike having been taken by him (Khushinder Singh) 22 workmen out of the aforesaid 24 were reinstated and the only two persons who were not so reinstated were Dinesh Kumar and N.R. Sharma. He has further stated that both these workers were active members of the trade union and the company (management) wanted to get rid of them. I have no reason to disbelieve his statement. The circumstances of the case show that Mr. N.R. Sharma has really been victimised. This has been done by forcing him to work when he was unable to do so and then by sending him twice to the male nurse for a medical examination on the point whether he had a pain in his chest and then by throwing him out of service on this small excuse. What was really to be enquired against him was whether he had deliberately disobeyed the orders of his Superior Officer. The charge could not be brought home to me till it was definitely located that he had no pain in his chest. Actually the management had no material to come to this finding. I have no doubt that he has been victimised for his trade union activities.

Before concluding my award on this point I may mention that Mr. K.P. Aggarwal who held the enquiry also conducted the case of the management before me and during the conduct of the whole case he gave an impression to me that he was more in the nature of a prosecutor than that of a judge. I am definitely of the opinion that the enquiry should not have been entrusted to him and should on the other hand been entrusted to another officer who could have taken more detached and rational view of the matter. For the reason stated above I hold that the enquiry is improper and is vitiated and that Mr. N.R. Sharma has been victimised by the management. In the circumstances I set aside the order of dismissal passed by the management against Mr. N.R. Sharma and direct the management to reinstate Shri Sharma with continuity of and without break in his service and this will be done within one month from the date of the publication of this award in the official gazette. I further direct the management to pay full back wages to Mr. Sharma for the entire period for which he had been out of service and this will be done on the basis that he had always remained in the service of the management.

No order as to costs.

Dated the 23rd April, 1968.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 544, dated Chandigarh, the 24th April, 1968

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 4081-3Lab-68/11207.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of (1) Fire Officer, Haryana, Chandigarh. (2) Municipal Committee, N.I.T., Faridabad.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
CHANDIGARH

Reference No. 102 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF (1) FIRE OFFICER, HARYANA, CHANDIGARH.
(2) MUNICIPAL COMMITTEE, N.I.T., FARIDABAD.

Present :

Shri R. C. Sharma, for the management.
Shri Charanjit Lal, for the workmen.

AWARD

The Municipal Committee, Faridabad (which was previously a Notified Area Committee) introduced fire brigade service in Faridabad Township sometimes in 1961. Certain quarters had been constructed by the Ministry of Rehabilitation and they were ultimately transferred to the Municipal Committee for residence of the fire brigade staff. It is not denied that the idea in providing these quarters to the fire brigade staff was that the employees employed in the said staff should remain near the fire brigade station so that as and when there was any rescue or fire call they may be able to attend the same without any delay. Electric connections and water taps were already provided in the quarters and as the employees of the fire brigade had to be on duty for all the 24 hours, the Committee used to pay the bills of the electricity and water charges. It appears that during the audit for the period from October, 1961 to March, 1962, an audit objection was raised (a copy of which is Ex. R.1) and the material portion of which read as under :—

"Sanction of the Committee for free residence and supply of water and electricity was not forthcoming."

It appears that the Committee was always willing to provide free electricity to the staff of the fire brigade which consisted of about 25 employees only. The audit department, however, kept on raising objections against the said free supply and since neither the Committee paid the electric bills nor the staff of the fire brigade paid the same, the amount accumulated and the Punjab State Electricity Board decided to cut off the electric connections of the fire brigade staff and did actually cut them off sometimes in February, 1965. The fire brigade staff strongly protested against this and the Committee passed a special resolution on 2nd March, 1965, approving the payment of old electric bills of the fire brigade staff quarters up to date and asking for restoration of the electric connections. The auditors again raised an objection against this resolution and that objection is contained in document Ex. R.12. Neither the representatives of the Committee nor that of the Fire Officer could explain to me the nature of the objection contained in R.12. This document is wholly unintelligible to me and I have not been able to appreciate or even know the exact objection. The fact, however, remains that the bills were not paid and the connections were not restored. The workmen kept on pressing for the same and the Municipal Committee kept on writing to the Government and to the Fire Officer for obtaining sanction to pay the same. It appears that the Government ultimately did not agree to permit the Committee to pay the bills and a final no was given to the workmen sometimes in 1967. The trade union of the workmen then served a demand notice on the Municipal Committee in this respect. The demand having not been complied with by the Municipal Committee or the Fire Officer, and the conciliation proceedings with regard to the same having presumably failed, Industrial dispute which thus arose was referred for adjudication to this Tribunal under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government Notification No. ID/t-RD/206C/52104, dated 6th December, 1967. The only item of dispute which is mentioned in the said notification is in the following terms :—

"Whether the action of the management in withdrawing the free supply of electricity was justified and in order ? If not to what relief the workers are entitled and from which date ?"

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the Municipal Committee and the Fire Officer filed their written statements. Several preliminary objections were raised by the Municipal Committee with regard to the validity of the reference and the pleadings of the parties necessitated the framing of as many as five issues which are as under :—

- (1) Whether the activities of the Municipal Committee which are relevant in the present case cannot be deemed to be an industry and as such the dispute in question is not an industrial dispute ?
- (2) Whether the Fire Officer and the Municipal Committee contravened the provisions of Section 9-A of the Industrial Disputes Act ? If so, what is its effect on the present reference ?
- (3) Is the dispute in question not an industrial dispute for various reasons given in the written statement of the Municipal Committee ?
- (4) Is the demand in question stale and belated. If so, what is its effect on the present case ?
- (5) Whether the action of the management in withdrawing the free supply of electricity was justified and in order ? If not to what relief the workers are entitled and from which date ?

Parties were given an opportunity to lead their evidence in respect of the said issues and after the conclusion of the same their representatives also addressed their arguments to me. Although I feel that the workmen have got a good *prima facie* case on merits and there does not appear to me any justification either on the part of the Municipal Committee or on the part of the Fire Officer to deprive the fire brigade staff of free supply of electricity at least to the extent provided for by the Fire Officer in the Standing Orders which have been enforced in some of the Municipal Committees but which have still not been enforced in this Committee, I cannot decree the demand in this case on the short ground that I feel that the contention of the Municipal Committee covered by issue No. 1 has got a good deal of force and in view of the same I have no jurisdiction to give any relief to the workmen in the present case.

Issue No. 1.—After giving my careful consideration to the matter I feel that the activities of the Municipal Committee in running the fire brigade cannot possibly be deemed to be an "Industry" and the dispute arising out of the same cannot, therefore, be held to be an industrial dispute. The word "Industry" is defined in clause (J) of section 2 of the Industrial Disputes Act which reads as follows :—

- (J) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

In a recent case of the Madras Gymkhana Club Employee's Union reported in A.I.R. 1968 S.C. 454 and 1967 II LLJ-720 their lordships of the Supreme Court have examined in details the aforesaid definition of the word "industry" and have discussed in their judgement the import and meanings of each of the five words used in the said definition, namely (1) "business" (2) "trade" (3) "undertaking" (4) "manufacture" and (5) "calling", and have come to conclusion that before the work engaged in by an employer can be described as an industry, it must bear the definite character of "trade" or "business", or "manufacture" or "calling" or must be capable of being described as an "undertaking resulting in material goods or material services." If the tests laid down by

their lordships of the Supreme Court in the aforesaid ruling are applied to the present case the activity of the Municipal Committee in running the fire brigade service cannot possibly be described as an industry because the meanings and import assigned to the words business, trade, etc., in the aforesaid ruling do not leave any doubt that the said activities of the Municipal Committee do not fall under any of the aforesaid five words. The workmen mainly rely on a previous judgment of their lordships of the Supreme Court in Corporation of City of Nagpur *Versus* Its Employees, 1960 II-LLJ-523, and contend that the activities in question do at any rate fall under the wide meanings which were given in the aforesaid case to the word "undertaking". Their lordships however have in their latest ruling of the Gymkhana Club, Madras, preferred in this respect to accept the tests laid down in the two earlier cases i.e., Banerji's case (1953-I-LLJ. 195) and Baroda Borough Municipal Committee (1957-I-LLJ-8), and in column 1 of page 731 of the report of the Gymkhana Club case in 1967-II-LLJ-p. 720 they have observed as under :—

"The word 'undertaking' must be defined as : 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade.' This is the test laid down in Banerji case (1953-I-LLJ.195) (*vide supra*) and followed in the Baroda Borough Municipality case (1957-I-LLJ-8). Its extention in the Corporation case (1960-I-LLJ.523) (*vide Supra*) was unfortunate and contradicted the earlier cases."

In view of the clear authority of their lordship of the Supreme Court in the aforesaid Gymkhana Club case it is impossible for me to hold that the fire brigade activities carried on by the Municipal Committee, Faridabad fall within the ambit of the definition of the word "Industry". The said activities not being an industry the dispute arising out of the same cannot be termed as an industrial dispute and the Government of Haryana had therefore, no legal authority to refer the said dispute to this Tribunal under section 10 of the Industrial Disputes Act which relates exclusively to the industrial disputes and not to any other types of dispute.

In view of my above findings on issue No. 1 it is wholly unnecessary for me to record findings on the other issues. The reference is, therefore, held invalid and no relief can possibly be given to the workmen in this reference.

Dated, the 24th April, 1968.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 545, dated, Chandigarh, the 24th April, 1968.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

R.I.N. AHOOJA, Secy.